Office of General Counsel

Hot Topics

New Litigation: *Lee Perry v Wayne Christian, et al, No. 20-20277 (5th Cir.)* - The U.S. Court of Appeals for the Fifth Circuit dismissed the appeal filed by Lee Perry because plaintiff had failed to alleged sufficient facts to show that he suffered any cognizable injury.

New Litigation CAA: - *Downwinders at Risk v. Regan, 4:21-cv-03551-DMR (N.D. Cal.)* - On May 12, 2021, Downwinders at Risk, Sierra Club, Center for Biological Diversity, Air Alliance Houston, Texas Environmental Justice Advocacy Services, Appalachian Mountain Club, Earthworks, Natural Resources Defense Council, and Environmental Defense Fund filed a complaint against the EPA in federal district court in the Northern District of California. Plaintiffs allege under the Clean Air Act that EPA has failed to act on 32 states' "good neighbor" SIP submissions under CAA 110(a)(2)(D)(i)(I) addressing interstate ozone pollution transport under the 2015 ozone NAAQS.

New Decision: *CWA, CERCLA, FTCA - In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015* - On May 13, 2021, the District of New Mexico dismissed New Mexico's CWA 505(h) claim against the EPA Administrator, holding that CERCLA 9613(h) bars review of the CWA claim and dismissed the CWA claim "as it relates to the Gold King Mine and the other mines that are included in EPA's response actions." Order at 7.

New Decision: *TSCA - A Community Voice, et al v. EPA (9th Cir. No. 19-71930)*– On May 14, 2021, a split panel of the Ninth Circuit Court of Appeals issued the attached adverse decision ruling against EPA's 2019 TSCA rule on dust-lead hazard standards (DLHS) and the definition of lead-based paint (LBP). The majority concluded that EPA must reconsider the DLHS using only health factors (and, in doing so, reconsider the dust-lead clearance levels) and must reconsider the LBP definition and the soil-lead hazard standards.

New Decision: *SDWA -- Washington State Dairy Federation v. US EPA (9th Cir. No. 20-70331)* – On May 14, 2021, a 9th Circuit Court of Appeals panel dismissed a petition for review of a Section 1431 imminent and substantial endangerment order, and a related report, as untimely under the 45-day statute of limitations for challenging final actions under SDWA. The order was issued on consent in 2013 and addressed the serious nitrate contamination in Yakima Valley, Washington, which was caused primarily by dairy wastes.

New Decision: *Hardeman v. Monsanto (9th Cir.)* – On May 14, 2021, the 9th Circuit upheld a district court ruling that state failure-to-warn claims based on the pesticide's labeling (Roundup) were neither expressly nor impliedly preempted by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Although EPA is not a party to this action, EPA filed an amicus brief (also attached) arguing that the State warning claims deemed necessary were in fact expressly preempted by FIFRA and if added would result in the misbranding of the pesticide.

Upcoming Major Decisions and Events

Nothing to Report